

CHILDREN'S HEALTH AND ENVIRONMENT COMMITTEE

DATE: March 10, 2005

CALLED TO ORDER: 6:42 p.m.

ADJOURNED: 10:16 p.m.

ATTENDANCE

ATTENDING MEMBERS

Angela Mansfield, Chair
Greg Bowes
Jim Bradford
Scott Keller
William Oliver
Steve Talley

ABSENT MEMBERS

Susie Day

AGENDA

HOSPITALITY PERSPECTIVE

Indiana Restaurant & Hospitality Association - John Livengood, President

Slippery Noodle - Hal Yeagy, Owner

Nicky Blaine's - Simon Robinson, Owner

Buffalo Wild Wings - Mike DeWeese

Outback Steakhouse - John Benjamin

General Hotels - Tim Worthington

Scotty's Brewhouse - Scotty Wise

Hall's Castleton Grill - Don "Bud" Hall

Mo's...A Place for Steaks - Jeremiah Hammon

Marion County Licensed Beverage Association - Mark Webb

Living Room Lounge - Deborah McLaughlin

Hogan's Pub - David Hogan

Indiana Amusement and Music Operators Association - Bill Smythe, President
and Leslie A. Murphy, Executive Director

PROPOSAL NO. 45, 2005 - amends the Code by establishing nonsmoking areas

"Postpone" until May 5, 2005

Vote: 4-1

CHILDREN'S HEALTH AND ENVIRONMENT COMMITTEE

The Children's Health and Environment Committee of the City-County Council met on Thursday, March 10, 2005. Chair Angela Mansfield called the meeting to order at 6:42 p.m. with the following members present: Greg Bowes, Jim Bradford, Scott Keller, William Oliver, and Steve Talley. Susie Day was absent. Councillors Scott Schneider and Lincoln Plowman were also in attendance.

Chair Mansfield stated that each Committee member has some information that was passed out regarding the economic impact of smokefree laws based on case studies; a one-year review of New York City's smokefree state performed by the city's Departments of Finance, Health & Mental Hygiene, Small Business Services, and Economic Development; and an article referring to a tobacco industry study of New York's smokefree air act. [Clerk's Note: These documents are attached as Exhibits A, B and C.] She stated that this evening's hearing will focus on the hospitality perspective.

HOSPITALITY PERSPECTIVE

Indiana Restaurant & Hospitality Association - John Livengood, President

Mr. Livengood stated that he represents the hospitality industry on many issues, and he is here tonight to oppose a smoking ban in restaurants. He said that restaurant owners want to keep the welcome mat out for everyone, and they also want to keep the welcome mat out in Indianapolis for convention business. The Association's opposition to this ordinance is a philosophical one, as many of their restaurants have already gone smokefree. He said that the Association represents a broad spectrum of hospitality establishments, including hotels, full-service fine dining, casual dining, and neighborhood family-owned restaurants.

Mr. Livengood said that he is not a smoker, but people who smoke have a right to assemble with other people who smoke, just as he has a right to assemble with people who do not smoke. The proposal to ban smoking in privately owned and operated businesses is an unwarranted and unnecessary infringement on the civil liberties of individual citizens and the property rights of business owners. He stated that individuals have given up far too many personal freedoms and rights to the government already, and have accepted limitations in the name of security, religious values, or political correctness. This proposal takes away the right of business owners to make a business decision and the right of individuals to choose what businesses they patronize. Throughout the history of this country, freedom has been expanded and choices enlarged for citizens, but unfortunately, today there are efforts to use the police powers of the government to impose the preferences of some on everyone. Government

should do just the opposite and seek to jealously protect the rights of all citizens to make their own choices whenever possible. Government is within its rights to ban smoking on public property, but the line should be drawn at private property. He said this is one of the strictest proposals he has seen across the country. In Marion County, half of the Association's members are smokefree and only 22 allow smoking throughout their business. A growing number of restaurants limit smoking to only their bar area or a separate room. These smokefree environments are being provided in a city that has no government-imposed smoking restrictions. The hospitality industry is providing consumers with choices and responding to the wishes of its customers. Mr. Livengood referred to a website that shows which restaurants offer smoking and which do not. (www.DiningChoicesIn.com) A "one-size-fits-all" government-imposed solution will not work for everyone. Passage of a smoking ban would result in economic hardship for those Marion County businesses with a customer base that includes a large percentage of smokers. There is no need to endanger any business, endanger the job of any employee, or discourage conventions and visitors to the community. Indianapolis should let the current state law and the marketplace continue to provide choices to everyone. Mr. Livengood urged those who feel passionately about the need for a ban to simply patronize the growing number of restaurants that choose to be smokefree. He stated that in Maryland, the proposed smoking ban was defeated for the third year in a row. One of the factors for making that decision was a study done by the Maryland Restaurant Association about the economic impact. He provided a copy of this report and testimony for committee members. [Clerk's Note: A copy of this report is on file in the Council office with the original set of minutes.]

Chair Mansfield thanked Mr. Livengood for his testimony. She stated that after all presenters have spoken, she will allow questions and comments as they relate specifically to the information presented this evening. She said that there will be many more opportunities for non-specific public input at four public forums, the first one to be held on March 30, 2005.

Slippery Noodle - Hal Yeagy, Owner

Mr. Yeagy stated that he is opposed to Proposal No. 45, 2005, not because it deals with smoking, but because it deals with another government regulation of private property. The Slippery Noodle Inn employs approximately 50 people and does close to \$1 million a year in food sales. They allow minors in the atrium area, which is a non-smoking area, during their lunch and dinner hours. This is in response to conventions that come to town and family-oriented shows. Proposal No. 45, 2005 demands a fundamental change in the nature of his business. This would change the entire attitude and atmosphere of his establishment. People want to socialize in a relaxed, fun atmosphere, and drinking and smoking tend to go together. Sixty percent of their customers have told them they would come to the Noodle less often if smoking was not allowed. The business owners would have to enforce the ban, pay the fines, and risk losing their licenses, thus putting them out of business. Mr. Yeagy said that this proposal would prohibit him from smoking in his own office in his own building during

hours when the Noodle is closed. The Noodle's business deals with many things that are considered unhealthy, such as alcohol, red meat, late hours, and fried foods. Which of these things will be the next public health item from which citizens need to be protected? He provided a copy of an article (attached as Exhibit D) by Arthur Farnsley, a researcher and writer, who says better than he can why he opposes this proposal. Mr. Yeagy quoted from the article and stated that the real problem is that the government is trying to legislate what private business owners and private citizens do on private property. He said that his employees and clients know that a visit to his establishment includes exposure to some smoke. He said that he has no problem putting up signage or wording on job applications warning of the exposure to smoke, but he has a problem with the government telling him what he can do on private property with a legal and subsidized product.

Nicky Blaine's - Simon Robinson, Owner

Simon Robinson stated that he is the president and chief executive officer (CEO) of TreeHouse, LLC, the company that owns and operates Nicky Blaine's. Nicky Blaine's is a martini and cigar bar located just off Monument Circle at 20 North Meridian Street. He said that the proposed ordinance would literally put his establishment out of business; therefore, the owners, customers, suppliers, and employees take this proposed ordinance very seriously. He said that their plea is straightforward: "Please do not use the power of government to wipe out a growing Indianapolis business and source of employment and enjoyment for so many of your constituents and fellow citizens." The signage of Nicky Blaine's clearly identifies the establishment as a martini and cigar bar, and only adults over the age of 21 are permitted to enter the premises, including employees, which they call associates. Everyone who therefore enters Nicky Blaine's knows that alcohol will be served and cigars will be smoked. The food served at Nicky Blaine's is best described as appetizers, and people do not come to this establishment for dinner. Their customers come to Nicky Blaine's to relax with a beverage, have conversation, listen to good jazz music, and if they care to, smoke a cigar or cigarette. If anyone walked into their establishment and was surprised to find someone smoking, it would be reminiscent of a scene in "Casablanca," where the police chief is "shocked" to find gambling going on in Humphrey Bogart's casino. If martinis and cigars are not to a person's liking, they can and should walk on by Nicky Blaine's. He said that Nicky Blaine's opened in 1998 in the old King Cole restaurant building and established a thriving business as an upscale nightclub for downtown Indianapolis. They took a big risk in doing so, but their business became so popular, that they moved across the street to the Guarantee Building and doubled their square footage. Even increasing space, they still have a line outside on Thursdays, Fridays and Saturdays, and business continues to grow. Nicky Blaine's invested over \$750,000 of their own money, not borrowing a dime, to completely renovate the downstairs of their current building, including every technique to improve air circulation and air quality. He said that Nicky Blaine's spent \$35,000 for the best air circulation system on the market. This system is serviced monthly and the air is changed seven times an hour. They have done everything they can do to reduce the amount of smoke in their establishment, but there

are still times when those who cannot stand smoke may be uncomfortable. He said that the sale of cigars represents 12% of Nicky Blaine's total annual revenue, and they are the largest seller of cigars in the state of Indiana. They sold \$150,000 of tobacco products in 2004. He said that if smoking were prohibited in their establishment, they could not make up those sales in alcohol and food. He said that Nicky Blaine's appeals to a very narrow range of customers who enjoy the total experience of relaxation, conversation, an adult beverage, good jazz, and perhaps a cigarette or cigar. Banning smoking in their establishment would be like removing balls and pins from a bowling alley and expecting them to make up lost revenue by selling more beer and adding more pinball machines. The company is a one-establishment business, is locally owned, and succeeds or fails on the success or failure of Nicky Blaine's. If this proposal were to be enacted, they would have to consider shutting down on Meridian Street and moving across the 96th Street line into Hamilton County to re-create the market there.

Mr. Robertson said that testimony at the first hearing indicated that this ordinance was trying to protect employees, and not necessarily customers. He said that their associates are the "cream of the crop" of the Indianapolis hospitality industry. They are extremely talented, well-educated, well-trained individuals who could get a job at any hotel or restaurant in the city. There is very low turnover at Nicky Blaine's, but when there is an opening, there are dozens and dozens of applicants waiting for that position. Their full-time servers can make up to \$35,000 and bartenders can make up to \$70,000. Nicky Blaine's offers a full benefits package, including medical, dental, disability and life insurance. The best help this Committee could be to Nicky Blaine's employees is to not put them out of business. He said that this proposal does exempt certain businesses, and there is ample precedent across the country to exempt businesses such as theirs. He asked that the Council consider the consequences to Nicky Blaine's if Proposal No. 45, 2005 is enacted in its current form.

***Buffalo Wild Wings* - Mike DeWeese**

Mike DeWeese, owner of Buffalo Wild Wings downtown and owner of four Dick's Bodacious Barbecue franchises, two of which are in Marion County, stated that two of his restaurants choose to be non-smoking and the other three have smoking in their bar areas. He is an avid non-smoker, is allergic to cigarette smoke, and has three small children that he does not allow around cigarette smoke. However, he can take his family to Buffalo Wild Wings without subjecting them to cigarette smoke because there is a non-smoking section with separately ventilated air. He said that this is a matter of freedom, and he has friends who are fighting for freedom in Iraq who have e-mailed him that they cannot wait to come home and have a beer, a cigarette and some wings in his establishment. To tell them that they cannot do so is incomprehensible to him. He said that he is tired of government telling business owners what they can and cannot do, thus taking away their freedoms.

Outback Steakhouse - John Benjamin

John Benjamin, representative for Outback Steakhouse who has been in the restaurant business for 21 years, stated that all of his restaurants originally had no separate non-smoking sections. However, their customers demanded a non-smoking section, and they complied. He said that in both Fort Wayne and Bloomington, the smoking bans greatly affected their restaurants, and they have not recovered. Anyone who owns a business in Marion County, especially those that border the County line, will be put at an unfair disadvantage. Smokers will go over the County line and tax dollars will be lost. Twenty-five percent of their current clientele are smokers. He oversees 17 restaurants, and the majority of their smoking sections are only in the bar areas. He said that the Council should let the customers decide what restaurants should offer.

General Hotels - Tim Worthington

Tim Worthington, vice chairman of General Hotels, stated that they own and operate six hotels in Indianapolis and operate the Chanteclair Restaurant. He said they do have some non-smoking areas in their restaurants, and some bar areas that allow smoking throughout, with some that have non-smoking areas. He said that when the Formula 1 Race was here last year, they put up a cigar and martini bar on a hotel floor at the airport and sold \$2,500 in cigars in two days. Their hotel at the airport actually has all public areas designated as non-smoking, and like most hotels has 25% of their rooms allotted for smokers. He said that totally eliminating the right to smoke is unconstitutional. He said that he currently serves on the Chamber of Commerce Smoking Task Force, and he has provided a copy of their recommendations to the Committee (attached as Exhibit E). He said that while he is not a smoker, he is an American and thus lives in a free society, and those who want to smoke should be allowed to do so. He said that their employees do not seem to mind the smoke because they are being allowed to make a good living. He said that it is more of a freedom issue, and he hopes there are some compromises that can be made with this proposal.

Scotty's Brewhouse - Scotty Wise

Scotty Wise, owner of Scotty's Brewhouse locations in Muncie, Bloomington and West Lafayette, said that he serves on the Hospitality Association and supports the association in opposing this ban. However, all three of his restaurants are smokefree, one mandated by the City of Bloomington. He said that he is a non-smoker, but does not profess to be a smart man, a doctor, or a legislator. He is, however, a proud American, and what he loves about this country is the capitalist society of competition. He said that in his business, there is one thing that dictates how he does business, and that is money. He said that people will vote with their dollars and their patronization. If they do not want to eat at a smokefree restaurant, then they will go to one where smoking is allowed. If he finds that he loses customers because of his decisions, he can then make changes to accommodate the market. He said that he does not need

the government telling him how to run his business. He asked if this proposal goes forward, then what will be the next element government will try and regulate. Will they then tell him what kind of oil in which he should fry his food?

Hall's Castleton Grill – Don “Bud” Hall

Bud Hall, owner of the Castleton Grill on 82nd Street and several restaurants in Fort Wayne, said that at one time he owned 15 restaurants in Fort Wayne, but the smoking ban enacted there in 1998 has caused him to close three restaurants, with two more in danger of closing. He said that the Fort Wayne ordinance did allow for smoking areas that were sealed off in a restaurant. The restaurants that will be hurt the most by this type of regulation will be the small, independently owned restaurants. He said that all of the restaurants he had to close were neighborhood restaurants and he could not afford to divide these restaurants into separate rooms because of the layout of the buildings. He said that he employed 40 to 50 people at each of these restaurants, with sales of approximately \$1 million a year for each establishment. All of these restaurants had been in operation for over 20 years, but sales were down eight to twelve percent, and it was too difficult to make up that difference. He said that the restaurant business is fragile and little things make an establishment sink or swim, such as cleanliness, service, chuckholes in the parking lot, and providing smoking areas. Restaurants that are open 24 hours a day experience an influx of smoking customers after bars close early in the morning. Sunday mornings after church hours, these same restaurants receive mostly non-smoking customers. He said that five of his restaurants had bars and it was easy to seal off the bar areas. He has friends who have invested their life savings into their business and a regulation like this can kill them. He said that Indianapolis is a great town, and this ordinance will hurt the independent restaurants that give this city its flavor and personality.

Mo's...A Place for Steaks - Jeremiah Hammon

Mr. Livengood said that Mr. Hammon was present earlier but had to leave because his restaurant received a large party of 150 people and he needed to attend to that situation.

Chair Mansfield said that the Councillors may have some questions to ask of those who have testified so far. She stated that since the concept of the military fighting for freedom was brought up, she would like to say that she is a mother of a United States Marine who is currently serving in Iraq. She said that while she encourages the passion that is shown to protect the rights of military personnel, her son did not get the opportunity to vote because he was insuring that the Iraqis' right to vote was protected. If anyone therefore wants to fight for the rights of those who fight to keep this country free, she would encourage them to fight for servicemen's rights to vote.

Councillor Keller said that he would like someone to address the public health issue of employees. He said that in his district, there is a 10% unemployment rate, and most of the people who work in bars and restaurants in his neighborhood do not have the option to say they will not work in a place where smoking is allowed. Mr. Hall said that most employees come in knowing the environment in which they are going to be working. He said that with regards to employees who are sensitive to smoke, he accommodates their wishes and lets them work in the non-smoking areas. He said that during debates surrounding the Fort Wayne ordinance, a study was done with non-smokers who worked in smoking sections, and there were no negative toxins found in their bloodstream.

Mr. DeWeese said that he has three servers who are non-smokers and he asked them where they preferred to work. These individuals preferred to work in the smoking section, because they believed they could make more money with these customers.

Mr. Robertson said that the majority of Nicky Blaine's associates smoke and they are concerned that if this ordinance is passed, they will have no place downtown to smoke. He said that they offer health insurance and have done everything they can architecturally and design-wise to move air through their establishment. He said that their employees do not have a lot of sickness, make a good living, and are happy working in this environment.

Councillor Oliver said that saying that the government is intruding on private rights is not really accurate, as the government is made up of ordinary citizens like everyone who has spoken this evening, and this is an issue of health and safety. He said that they are trying to find a middle ground to protect 80% of the public that does not smoke. There are many laws people do not like that help protect the health and safety of citizens, such as 25-mile-per-hour speed limits in school zones and no dumping allowed in the river. He said that the goal of this proposal is not to run any company out of business or create new smokefree businesses. However, they need to find a balance. He said that movies like "Casablanca" glamorize smoking and it seems like the American way to many people, but is still a health hazard. It should be a personal choice, however, and not harm those that choose not to smoke.

Mr. Worthington said that he agrees that a compromise is needed and a good balance needs to be found. He said that Proposal No. 45, 2005 is too strict and will put many independent owners out of business.

Mr. Livengood agreed and said that they are not against every regulation to guard health and safety, but feel people should have the choice to enter an establishment that allows smoking. He said that restaurants are not against all regulations and government acts. He said that they welcomed the new food

codes that helped them to provide safe food to customers. He said that they support regulations that are fair and provide choices for people.

Councillor Bowes said that this proposal offers some good debate, and as a trial lawyer, he loves asking questions and promoting good debate. He said that Mr. Livengood used words like "unwarranted and unnecessary intrusion" and that the proposal being offered was to "protect preferences" of some people. He said that Mr. Livengood repeatedly emphasized that there was no need for this type of government intrusion. He asked if Mr. Livengood can tell the Committee that there is no health risk from second hand smoke at all. Mr. Livengood said that in his judgment, this is not a debate about health. While he is sure smoking is bad for one's health and is why he quit smoking, there is still some debate about the effects of second-hand smoke, but it probably is not good for one's health. However, he believes it does not matter to this debate, as there are plenty of places people can go without second-hand smoke, without having to regulate privately owned businesses. Councillor Bowes said that Mr. Livengood said he could not refute the fact that second-hand smoke is harmful to health, therefore it is debatable that there is a need for the Council to take action because of that health hazard. He added that it was testified there would be a harm to the hospitality industry if this proposal is passed, but industry-wide it would probably not be a harm that was noticeable. Mr. Livengood said that it will not put the hospitality industry out of business, but there will be an economic impact on individual properties that currently allow smoking, and on segments of the industry.

Councillor Bowes said that he hopes people do vote with their wallets and that those 72% of Marion County residents who do not smoke will not patronize those establishments that are putting these carcinogens and health hazards in the air. He asked Mr. Benjamin if by saying that his Bloomington Outback Steakhouse has not recovered from the smoking ban, that the store has actually closed. Mr. Benjamin said that they have not yet given up the fight and it is a matter of nickels and dimes. He said that although 72% of residents may not smoke, they also want the 28% that do smoke to visit their restaurants. Councillor Bowes said that Mr. Benjamin said 25% of their customers smoke and others make the choice whether or not to come into their restaurant. He asked if those who come into a restaurant that allows smoking are fully informed about how dangerous second-hand smoke is and that it kills 250 and hospitalizes almost 1,000 Marion County residents each year. He asked if they are informed that Marion County spends \$16.7 million to treat the diseases caused by second-hand smoke. Mr. Benjamin said that this is not a question his customers are asking and he has never had that conversation with any customer. He said that customers can go to a non-smoking establishment any day of the week, as there are plenty of them available, but they choose to come to his restaurant, where there is a smoking section. He said he does not know if they are educated on the issue of second-hand smoke.

Councillor Bowes said that Mr. DeWeese testified that soldiers serving in Iraq are looking forward to coming back and having a drink and cigarette at his establishment. He asked if the laws already do not dictate how much one of these soldiers can drink. He said if they get behind a wheel after drinking too much at an establishment, they would be committing a crime. He said that it seems the government has a right to impose a cut-off on legal substances when they become too dangerous to someone else. Mr. DeWeese said that he does not see the connection. He said that he does not smoke, but went to Nicky Blaine's with some of his employees recently. Although it was too smoky for him, it is a great place and they should stay in business because they are serving a certain clientele.

Councillor Talley said that the Committee has invited these individuals to the meeting this evening to share their views and opinions on this proposal and it is important for Committee members not to lecture, but simply gather the information and use it to make informed decisions.

Councillor Bowes said that he fully respects everyone's viewpoint and this is an important debate in which everyone should be allowed to participate. He said that it is a difficult decision, as they are charged with protecting a governmental system focused on individual rights. He said that his law practice is based on individual rights. However, there is a place for government to step in, such as with the food quality regulations. He said that his questions are designed to get more information to help the community make the right decision, and he does not pretend that his views should be the views that carry the day.

Councillor Bowes stated that many have said this proposal goes too far, yet the majority respect some of the things the Committee is trying to do with this ordinance. He said that Mr. Robinson asked the Committee to find a way to include an exemption for an organization like his to provide service for that segment of the population that wants to have a nice cigar and martini in a social setting. He said that the question is how the legislative body can define that exemption so that it is fair to all. How does the Committee balance that exception against the public health issue and without showing favoritism to one establishment over another? Mr. Robinson said that he would be more than happy to offer formal proposals for exemption language. He said that this is so important to the continuation of his business, that he could not offer such language off the top of his head this evening.

Councillor Plowman said that he is not a voting member of this Committee, but this issue is important to him, and he feels it is a shame that the Council is trying to infringe on individual rights of businesses and taxpayers in Marion County. He said that with the Mayor threatening to lay off policemen and firefighters, courts and judges dealing with an overcrowded jail, and an 8% increase in crime in the

townships that the Council would have more important things to do with their time than put businesses out of business and take tax dollars away from Marion County. He said that compromise was mentioned, and he believes that every aspect should be explored, because once the government gets inside, they never give up. He said that the Council needs to be careful what they do with this issue, as it will put some people out of business and cause hardships on providing for their families. If this is the most important issue the Council has to address, then vote on it this evening and get on with what is really important.

Councillor Bradford said that someone needs to prove to him that second-hand smoke actually causes death. He said that he does not know of any death certificate or coroner's report that lists second-hand smoke as the cause of death. Chair Mansfield said that the next meeting will feature presentations from a medical perspective, and there will be ample opportunity to ask that question of those presenters. Councillor Bradford said that he is a restaurateur, and although he has a no-smoking policy inside his establishment, smoking is allowed outside on his deck. He said that government could decide that red meat and sugar is bad because they lead to heart attacks, and try to ban those as well. He added that his district, as well as Chair Mansfield and Councillor Schneider's districts, are just six minutes from the Hamilton County line. Property owners in this area got hit with huge tax increases, and this would be just another concern that would cause businesses and commerce to leave Marion County, especially in his district. He said that even though 72% of the population may not smoke, they still go to these establishments. He said that Outback Steakhouse is a national chain. Their profits can fluctuate and they can shift dollars to other places with shortfalls. He said that he contacted a friend who does a lot of work with the Alcoholic Beverage Commission, and approximately 10% of all alcoholic beverage retailers and hotels are in Marion County. If those would have to go smokefree, that is a big percentage of the 92 counties, and the losses could be astronomical. He said that many of these establishments have to pay tobacco licenses, so they already pay fees. He said that this ordinance goes after an industry that invests tons of money into the economy by changing the rules on them in the middle of the game. He said that while some of the national chains may lose some business, the small privately owned businesses will be the hardest hit if this ordinance is passed. He said that these owners pay sales tax and food and beverage tax, and if people decide to go home for an extra drink in order to smoke, there will be a loss of tax revenue. He said that these people work 60 to 80 hours a week and invest so much time and effort into their businesses and the community. He said that he does not support this ordinance.

Mr. Livengood said that with regards to a compromise, he believes the only compromise is to do nothing and let the marketplace determine changes that need to be made.

Councillor Bowes stated that Councillor Plowman said that the Council had other things to focus on that were more important. As an employee of the Sheriff's Department, Councillor Plowman is concerned with public safety, and Councillor Bowes agrees that public safety is the Council's first priority. He said that in 2003, there were 102 homicides in Marion County. According to peer review statistics, almost 250 people die every year in Marion County due to second-hand smoke-related diseases. He said that this is therefore still an important issue.

Councillor Bowes asked Mr. Worthington what kind of ideas he has to craft a compromise to help protect citizens' health, yet act fairly with all businesses. Mr. Worthington said that he is a non-smoker, but is also a businessman and enjoys doing business in a free society. He said that he cares about employees, and he asks them to smoke outside. He said that this ordinance is simply too strict, and it will put establishments like Nicky Blaine's out of business, and it is not fair to them or to those who wish to smoke in a social atmosphere. He said that Ireland is a smokefree country, and other cities have adopted this ban, but are not doing as well as reported. He said that non-smoking areas have increased in restaurants because the market has demanded it, and that is the way it should be and this should be a market-driven issue.

Councillor Bowes said that he is willing to find a compromise that works, but he is very concerned about the health of the community. He said that some of Mr. Hall's businesses suffered because they did not have the wherewithal to make the structural changes required by the new smokefree ordinance in Fort Wayne. He said that this proposal does not allow for those kind of structural differences, and this law would affect both small and large businesses the same way. Mr. Hall said that there will still be a loss of business. A large national chain will survive, but a small business cannot absorb losses like a large chain. He said that when small businesses go out of business, then customers will flow to the national chains eventually. He said that without banning smoking in restaurants and bars across the nation or banning smoking altogether, this type of ordinance will simply beat up the small businesses. He said that the Indianapolis ordinance does not allow a sealed room, but he was just explaining the problems they faced when going smokefree in Fort Wayne. He said that there are many costly dynamics to the restaurant business that no one but a business owner would completely understand, and this is a very complicated issue.

Mr. Hall asked if any input was sought from restaurateurs when this ordinance was drafted. Councillor Bowes stated that these forums were designed to include public input from both the industry and individual citizens. Mr. Hall said that small business owners cannot be ignored and he would love to meet with the Committee to work out some compromises because he fully understands this business. He said that when the government begins to mess with a very complicated issue without all the facts, it will kill some of these small business

owners. Councillor Bowes said that this is the value of the governmental process, as it is a great way for the Council to learn and make an informed decision.

Councillor Bowes thanked all for their comments and said that the debate is not served however, when extremes and inflammatory language is used, such as, "It will kill them." Although the loss of a business is very debilitating, such statements diminish the lives of people who actually lose their lives to second-hand smoke and cannot live to fight another day and are not given another chance. Mr. Hall said that most individuals that die of second-hand smoke-related diseases are exposed at greater levels and more prolonged terms than what they would get for an occasional meal in a restaurant. Most of these incidents are caused in the home where a family member smokes on a regular basis.

Councillor Keller said that the way the Council usually does business is to put an issue on the table and hold hearings before reaching a final decision. He said that there will be six hearings on this ordinance, and Committee members will stay as long as needed to listen and give this issue the attention it deserves.

Councillor Bradford stated that the Chamber of Commerce has provided a position statement on this proposal, and one of the items refers to "a smoking ban in establishments which permit customers under the age of 18 to enter the establishment." He said that the problem he has with that is that an entity like the Slippery Noodle Inn, which is a big part of the convention service for Indianapolis and has a family room during the day, would no longer be able to offer that service. He said there are lots of other places in Broad Ripple that are the same. He said that in establishments where only those over the age of 21 are allowed, people already know the dangers before they enter. Warnings are written on the cigarettes and on alcoholic beverages, and it is a choice. However, this ordinance is way over the top and goes too far.

Councillor Schneider said that in 2002, the Council considered a smoking ban ordinance that was much less restrictive than this proposal. Three of the sponsors of the proposal before the Committee this evening are new to the Council since that time and are not familiar with the history on this issue. The Council took a very slow path during those discussions and included members of the hospitality industry in a sub-working group, comprised of much more than just Council members. This ordinance still failed. He said that he believes representatives of the hospitality industry should have been involved much earlier, and he hopes members of this Committee will give credence to what they have to say.

Chair Mansfield said that the purpose of these hearings is to get substantial input from all areas affected by this ordinance. She said that the community is in a

much different place than it was a couple of years ago, and there has been extensive research into this proposal and many public hearings will be held before any final recommendation is made to the Council. She said that this is a very important issue and everyone will be heard.

Mr. Yeagy said that due to the hours these meetings are conducted, many of his employees cannot attend because they are working. He provided a petition signed by his employees with their opinions regarding this proposal. He added that children are more exposed to second-hand smoke outside of the restaurant environment, and most of this exposure takes place in their own homes from parents who smoke.

Chair Mansfield thanked those business owners who have spoken and invited them to stay for further questions at the end of the rest of the presentations. She said that there will be public forums held on March 30 and April 6, 7, and 14, 2005, so possibly these dates can allow some employees to attend when they are not working.

Marion County Licensed Beverage Association - Mark Webb

Mark Webb, attorney for the Marion County chapter of the Indiana Licensed Beverage Association (ILBA), stated that many of their members are bar and tavern owners. He said that he is not here to discuss smokers' rights or dispute the health data. They are asking that the Committee oppose the ordinance for one reason: the fact that it will hurt their businesses. A smoking ban would cause a decline in customers for many bar owners. While it may not happen the day after a ban took effect, the loss of profits would eventually become apparent. A few unprofitable months would force many small business owners out of business. The national chains may be able to withstand an adjustment period, but not the small, independently owned family businesses. He said that these owners know their customers, and every decision they make is geared to make their customers happy and make their businesses successful. Some of their members have become non-smoking establishments because that is what their customers want. Others are scared that their customers will not come back if the smoking ban is passed. If this ordinance becomes law, these owners will be forced to become enforcement police, as well as being fined for what might take place within 50 feet of their establishment. He said that some smokers may take their business away from establishments near the county line to other restaurants or bars outside the county where smoking is allowed. This ordinance puts restaurant owners in the middle of a fight between government and the tobacco industry. Mr. Webb showed stacks of petitions from restaurant owners who oppose the smoking ban. He said that these businesses are valuable to Indianapolis, providing employment for citizens and contributing to the tax base. Food and beverage taxes have helped to fund numerous building projects around the county. Trying to clean the air of Indianapolis on the backs of these small independent business owners is about as fair as trying to balance the state budget on the backs of low-paid state employees. Independently owned

establishments already face tough competition from national chains, and this further hinders their ability to compete.

Living Room Lounge - Deborah McLaughlin

Deborah McLaughlin, owner of the Living Room Lounge, stated that the establishment has been located at 934 Pennsylvania since 1967 with four different owners. She said that she has been a smoker since the age of 16 and is aware of what smoking can do to herself and those around her. She said that she has made that choice, and no one has forced her to smoke. She said that she cannot compete with the Nicky Blaine's or Slippery Noodle type establishments. The Living Room Lounge is a small business that survives on a week-to-week basis. She said that the clientele of the Lounge is extremely eclectic with people that live paycheck to paycheck. Eight out of ten of them are smokers with almost every table occupied by two or three smokers during the lunch hour. She said that many after-work customers come there to unwind and have a drink or cigarette before going home. Late night in the bar, there are many customers who work in the hospitality industry downtown and come to her establishment to have a drink and cigarette before going home. If this law passes, she would have to probably cut half of her staff of 11 employees. Her customers have told her that they would come less often or not at all if smoking was banned. She said that she would have to cut entertainment, as well, and does not have a corporate headquarters she can fall back on to sustain her. Everyone is aware of the health hazards of smoke, but this is about business and people, and business owners should be allowed to make their own decisions.

Hogan's Pub - David Hogan

David Hogan, owner of Hogan's Pub, said that his establishment has been in operation since the early 1940's with different owners. He said that he and his wife have owned the bar for 8 years and have completely remodeled it. He said that 80% of their patrons are elderly smokers. He said trying to tell one of his 70-year-old female euchre playing customers to put down her cigarette would be next to impossible. He said that the pub has three employees, one of which does not smoke yet works at another bar and chooses to work in those environments. Their fans and filters are serviced every month, and it is a very respectable neighborhood place which neighbors enjoy frequenting. He said that they own the building, the land, and pay the taxes and should therefore have the right to say what goes on inside the business. He said that at 17 years old, he was not allowed to drink or buy cigarettes, but his country could send him to the Republic of Vietnam to be shot twice. He has fought for himself and the rights of others to live in a free country, and this ordinance would take those freedoms away. He said that if they have to go smokefree, there is no doubt in his mind he will have to close within a very short time. If Amtrak closes in the Beech Grove area, almost 640 people will lose their jobs, which will also affect his establishment, and this is just another factor that will impact his livelihood.

Chair Mansfield said that she understands the concerns about loss of business, but the focus of this ordinance is really on the health of employees and their right to have a clean air environment. She said that the Living Room Lounge has some of the best burgers and homemade chips in town, as well as excellent staff, but she has to admit she usually has to purchase carry-out because she cannot handle the smoke. She asked if business owners have considered that they might gain some new customers by going smokefree. Ms. Laughlin said that the sales she has between 9:00 p.m. and 3:00 a.m. triples any purchases made before that time. She said that when she passed around petitions to her customers, out of 90 customers, only two did not sign the petition. She said that Karaoke on a Friday night is her best business, and most of that clientele smokes. Chair Mansfield said that there might be many others who would enjoy Karaoke or other social activities who might come out if they did not have to contend with the smoke. She said that she is one person who would actually come in and sit down and eat if the Lounge were smokefree. Ms. Laughlin said that she cannot rely on the "possibility" of new customers, which may not happen.

Councillor Bradford said that he worked in the field of alcoholic beverages around the state for almost 20 years. He said that the ordinance already exempts private clubs, and for many small taverns around the state, these businesses are like a private club. He said that Knights of Columbus, American Legion, and Moose Lodges have children in the bar areas and exposed to smoke, and this is allowed because they are a social club. He said that these taverns are a social club for many, and it is a personal decision whether a person sits down in an establishment or orders carry-out. He said that these taverns are the working man's friend and it is the regular customers who really pay the bills.

Mr. Webb said that although the argument has been made that more people will come if the establishment is smokefree, there is no guarantee or evidence to support the premise that the same number of non-smokers would come in and purchase the same amount of food and beverage to help these establishments stay solvent. He said that it is not possible to get a bank loan based on this premise.

Councillor Keller stated that if he owned a small tavern, he would also be scared of this ordinance and so he understands the fear. He said that in New York State, there are many upscale establishments in Manhattan, but just as many small neighborhood taverns in Albany like those represented here this evening. He said that studies have been done on the effect on all types of businesses. The New York Department of Finance for the State of New York shows that tax receipts for bars and restaurants are up 8.7% since the smokefree act. This is not a study done by a health organization or tobacco company, but by the Department of Finance. He said that there are some studies that show evidence that there is a bounce back. Though it might be hard to believe or understand at this stage, he would like owners to keep an open mind and consider what is going on in other communities.

Indiana Amusement and Music Operators Association - Bill Smythe, President

and Leslie A. Murphy, Executive Director

Leslie Murphy, executive director of the National Dart Association, stated that the National Dart Association is headquartered here in Indianapolis and they represent coin-operated amusement vendors. She said that 90% of their equipment is located in bars and taverns. From California to New York, from Florida to Texas, from Columbus, Ohio to Toledo, Ohio, they have heard from their members the effects of smoking bans on their businesses. Consistently, there has been a 25 to 30% drop in revenues when smoking bans are enacted. Three years after the ban in California, for those coin-operated amusement operators still in business, they are still at a 30% decrease from revenue experienced before the ban. These operators are typically small family-owned businesses whose main customers are local neighborhood bars and taverns. If these close, the operators have to take their equipment and store it in warehouses if there is nowhere else to place it. Ms. Murphy said that in Florida, their ordinance allows smoking in establishments where less than 10% of revenue is due to food sales, so many of these bars close their kitchens to remain a smoking establishment. The result is that people then drink more and eat nothing to absorb the alcohol. She said that these businesses also suffer due to county lines and neighboring counties taking away customers because they allow smoking. Ms. Murphy said that she is also the executive director of the Indiana Amusement and Music Operators Association (IAMOA), an organization for coin-operated amusement businesses. She said that the public outcry in Toledo, Ohio forced a referendum vote to rescind the full ban because of the revenue loss.

Bill Smythe, president of IAMOA and owner of four Claude & Annie's Restaurants and a coin-operated company called Indy Amusements, stated that he has been in business since 1977. He said that each member of the Committee should have received some background material prior to this meeting. He said that most of the studies referenced on second-hand smoke could be questioned, and there is equal data opposing the validity of these studies as there is data giving credence to them. However, since he is not a medical doctor, he can concede that second-hand smoke is dangerous. However, he cannot concede that revenues are not affected by smoking bans in this business. He said that he does not know if only 27% of the population of Marion County smokes, but he does know that on a Friday or Saturday night, almost 75% of his 300 customers are smokers. Suggesting that he will replace those 300 customers with non-smoking customers or keep all of those smokers is simply not accurate. Non-smokers are not visiting his establishments and this is not a real issue. He stated that in Toledo, the citizens overrode the decision of the Council and this is good government in his opinion, when the citizens actually get to make the decisions. They have statistical data that shows that smoking bans decrease revenue for coin-operated amusements by 25%, which is directly related to bar and tavern revenue. A bar is different from a restaurant due to televised sports games,

darts, pool tables and other amusements offered that are not offered in restaurants. This would retain customers for a longer period of time than in a restaurant for a meal. Many will go home to socialize, and these bars and restaurants will suffer. Mr. Smythe said that he sent information to each Councillor in whose district his establishments are located, including Councillor Bowes, and invited these Councillors to meet with him and discuss this ban's impact on his business and customers. He got replies from two of the four Councillors, of which Councillor Bowes was not one who responded. He said that right after Mayor Bart Peterson was elected the first time, he decided to take away the personal rights provided to violent video distributors. He said that the coin operators industry fought that legislation and won a \$750,000 settlement. If businesses do not fight these things on a personal level, the government will continue to take away more and more freedoms.

Councillor Bowes said that he did receive Mr. Smythe's invitation for a one-on-one meeting, but it is hard for him to accommodate every single person who wants to meet with him on an issue. That is why they schedule these types of public forums to hear all sides of the issue. He said that others in attendance tonight have also called him for one-on-one meetings, such as Mr. Webb, and it is just not possible to meet all requests as quickly as he would like.

Councillor Oliver said that there is a profit associated with cigarettes, and those sales affect the economy. Smoking is legal, government sanctioned, subsidized, and also unfortunately addictive. He said that it is hard to find a middle ground so that rights of businesses and smokers are not violated, but non-smokers' health is protected. Mr. Livengood said that many restaurants will not be affected adversely and will actually benefit because they would like to be smokefree but are scared to lose business. However, this is not true for all establishments. While the industry as a whole will probably remain flat, since some prefer smokefree and many restaurants will flourish, there will be numerous individual restaurants that will be devastated and will have to close their doors. This is the danger with government-imposed solutions, because not all businesses are alike, and these businesses need to have the freedom to respond to the market and serve their clientele. It is not reasonable to think some of these establishments can make up 70% of their business with new non-smoking customers. The large chain restaurants will survive and the small independents will be put out of business.

Councillor Keller said that a lot of people call him and ask to meet with him personally on an issue, but he thinks it is very important to hold these public hearings, which are broadcast live on television and help to get views out to the public. He said that it is better to have open public meetings on an issue rather than several small private meetings which are not open to the public.

Chair Mansfield called for public testimony on any of the materials offered this evening.

Bill Bowes, brother of Councillor Bowes, stated that it seems the biggest concern is about government intervention and where the line should be drawn. He said that 21 people died two years ago in a Chicago night club fire because of violation of safety ordinances. In Rhode Island, 96 people died in another night club fire because of using pyrotechnics without a permit or sprinkler system. He added that the September 11th terrorist attack led to better security at airports and the brawl at the Indiana Pacers and Detroit Pistons basketball game led to better security measures for players. He said that this is the same type of challenge with second-hand smoke exposure. The community and Council need to work together to come up with a good balance for protection. He said that Mr. Livengood emphasized that there was no need for the ordinance, but as a customer at many of these restaurants, he is bothered by the smoke and spends less time there than he would if they were smokefree. All of those who testified said that they are not medical experts, so if it is left up to them as to how smoking sections are separated from non-smoking, they will not be able to make these decisions as could experts who know the true effects. Mr. Livengood said that this is not a medical decision. The decision is not made by a restaurant owner, but by the customer. If the customers want a restaurant to go smokefree, they will go smokefree, but the decision should be driven by customer choices. Mr. Bowes said that this places the burden on patrons to be medical experts. If the City got rid of government intervention on fire codes and water quality, would the patrons then have to be experts on these issues in order for restaurant owners to make decisions? Mr. Livengood said that customers support fire and building codes, and he has never opposed these types of actions by the government. He said that there is no doubt that individuals participate in personal activities that are not safe, but the things that go on behind the scenes that affect customer safety are appropriate for government intervention. As to the ambience or atmosphere of a restaurant, this should be left up to the business owners.

[Clerk's Note: Councillor Oliver left at 9:45 p.m.]

Kelly Alley, citizen and member of Smoke Free Indy, asked what restaurants and bars have done to survey the 75% of non-smokers like her who want to come to these establishments but do not want to put their health at risk in order to do so. Mr. DeWeese said that this is a valid question. He has a large non-smoking section in his restaurant and did not discriminate when he circulated the petitions. He has even toyed with the idea of going non-smoking one day a week to see what it would do to his business, but already knows what it would do.

Dan Drexler, citizen, asked where the survey can be found that references 250 deaths in Marion County annually. Councillor Keller said that the last hearing presented some of this data, but the county Health Departments track this type of

information. Councillor Bowes said that the information can be found on the Marion County Health Department's web site.

Jerry Carter, citizen, said that he is a non-smoker but likes to eat. He asked why this Council has the right to choose where he eats and socializes. Chair Mansfield said that the difference between making choices about food and smoking is that food choices only affect the individual making the choice, but smoking affects those sitting in vicinity to the smoker, and second-hand smoke has a direct and immediate affect on someone else's health, even though they may have chosen not to smoke. Mr. Carter said that while he does not disagree, he should still be allowed to make the decision as to where he goes and whether or not he minds that a smoker is sitting next to him. He said that he can choose who is the Mayor, Governor, or President, but should also have basic choices about where he socializes and with whom. Councillor Bowes said that this is a very difficult decision, but they must also take into account the viewpoint of non-smokers and their rights to a healthy environment. Also, they need to make sure that they are not giving one type of business more freedom or advantage over another. He said that those who do not smoke are sometimes then left without choices, because they cannot go to a comedy club or listen to good jazz music because of the health hazard.

Councillor Bradford said that it is ironic that this ordinance is looking at saving people, yet a woman can kill a child in Indiana because abortions are legal. Chair Mansfield said that abortion is not germane to this ordinance and this subject. Councillor Bradford said that both deal with personal rights, and abortion does not protect the rights of an unborn child. Chair Mansfield said that the Council does not have jurisdiction over that issue for Marion County and therefore it is not germane.

Jenny Wilson, bartender for Loon Lake Lodge in Castleton, said that many of her customers smoke, but she still enjoys working there. Since she quit smoking six years ago her health has improved, but since beginning work in a bar four years ago, her health has not declined any. Therefore, she does not believe working 40 hours a week in an environment where smoking is permitted has had any adverse effect on her health. She asked if there any solid reports on health effects of second-hand smoke on employees. Chair Mansfield said that the past meeting relayed a lot of this information, and Ms. Wilson can get that information on the Council website or from the Council office, or she could contact Smoke Free Indy for further information.

Joe Wilson, owner of two bars in Indianapolis, said that he is a non-smoker but it is obvious some of the Committee members are so opposed to smoking that they cannot make an objective decision, and they should be replaced by people with more open minds. Chair Mansfield said that Committee members have sat and

listened to three and a half hours of testimony and appreciate all comments and will take them into consideration.

Max Garrett, co-owner of one of the largest dart bars in Indianapolis, asked how much consideration will be given to these signed petitions. He has had 88% of his patrons tell him they will not visit his establishment as often if they go non-smoking. Chair Mansfield said that Committee members will consider all information they are given and will hold several more hearings, including four public forums to get all the input they can before making a decision.

Matt Hall, Hall's Restaurant Group, said that there are so many reasons why a customer comes back to a restaurant. Part of the nostalgia about a place like The Living Room Lounge is the atmosphere, even though people may be indulging in things that are not good for their health. For this Council to decide what they indulge in is questionable. Mr. Hall added that Councillor Bowes said he wanted all the input he could get and admitted to receiving messages from both Mr. Smythe and Mr. Webb, yet when Mr. Webb got up to speak, Councillor Bowes left the room. Councillor Talley added that this meeting will be replayed 12 to 14 times on Channel 16, and all Councillors will watch those meetings and receive written minutes of the meeting. If a Councillor has to leave the room, they will still make sure they are informed on the subject. He said that all of these members except for himself, who is retired, have other jobs and many demands on their time, but they take their position very seriously and will review the input over and over again.

Diana Raymond, citizen, said that this Council should not pass a law that says smokers do not have rights to smoke in their own vehicles. She said smokers pay the excise taxes, yet they are being told they do not have their own rights. She said that she picked up smoking after a traumatic time in her life and it helps her to relieve stress. She said that it should be her choice where she smokes, because she is a considerate smoker and cares about her neighbor's health. Councillor Bowes stated that this ordinance does not prevent individuals from smoking in their own vehicles. It only prohibits individuals from smoking in a company-owned vehicle provided by an employer where there are occupants other than the driver. Ms. Raymond said that in July, her employer is going to ban smoking and will close the designated area for smoking, and employees will not even be allowed to go into their own vehicle on the property and smoke. Councillor Bowes said that this is not something this ordinance is doing, but is a decision of Ms. Raymond's private employer. Ms. Raymond said that it will get to the point where they cannot even stand on a public sidewalk and smoke.

Councillor Bradford said that under this current ordinance, there is no provision for a special smoking room in any establishment, and smoking is only allowed 50 feet from an establishment. Hospitals are making their own decisions to ban smoking, and Community North Hospital has even put a mile radius smoking ban

which includes places that are not even property owned by them. He said that he agrees that this ordinance is way too far-fetched when a person cannot smoke in their own vehicle if they own a catering business and an employee might ride with them to an event. He added that this ordinance does not even allow smoking on a public golf course, while a private golf course is exempt.

Jeremy Townsley, citizen, asked with regard to the Americans with Disabilities Act (ADA), how the rights of those with asthma are being protected when they are prohibited from working in these establishments, as contrasted with the rights of employers and smokers. Councillor Bowes said that there was no testimony offered on this issue tonight, but it is a very important issue and employers should be concerned about that. There is a federal law that requires employers to provide reasonable accommodation to people with disabilities who are otherwise able to work. He said that this is another piece of the puzzle that should be considered. Councillor Bradford stated that for those employees in the medical industry, there are certain types of latex that are also harmful to those who have asthma, so in considering disabilities there are many areas that could be opened up for lawsuits.

Patrice Adams, citizen, said that the comment was made that smokers would leave a bar if they could not smoke. She said that people cannot smoke on airplanes, but smokers survive for five to ten hours on a plane without smoking, yet they do not think they can sit in a bar for two hours without smoking.

PROPOSAL NO. 45, 2005 - amends the Code by establishing nonsmoking areas

Chair Mansfield said that Proposal No. 45, 2005 was postponed at the last meeting, and it was communicated that the Committee would try to decide on a firm date for action before this meeting. She said that she would recommend action on the proposal be set for the May 5th meeting.

Councillor Talley moved, seconded by Councillor Bowes, to "Postpone" Proposal No. 45, 2005 until May 5, 2005. The motion carried by a vote of 4-1, with Councillor Bradford casting the negative vote. Councillor Bradford said that he would prefer to just vote the proposal up or down this evening.

Chair Mansfield stated that the next meeting is scheduled for March 24, 2005, and will feature presentations from a medical perspective. There being no further business, and upon motion duly made, the meeting was adjourned at 10:16 p.m.

Respectfully Submitted,

AM/ag

Angela Mansfield, Chair